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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

In the matter of:

HCH ENTERPRISE, L.L.C.
5952 West Gail Drive
Chandler, Arizona 85226

HELEN C. HARTZE,
5952 West Gail Drive
Chandler, Arizona 85226

MARK KESLER,
10783 W. Encanto Blvd
Avondale, Arizona 85323

RESPONDENTS.

DOCKET NO. S-03540A-04-0000

**MOTION TO PERMIT WITNESS TO
TESTIFY BY TELEPHONE**

Arizona Corporation Commission

DOCKETED

SEP 28 2004

DOCKETED BY

[Signature]

AZ CORP COMMISSION
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The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") moves for permission to present the testimony of witness Donna Milich by telephone at the hearing scheduled to begin October 12, 2004. This motion is supported by the record in this matter and by the following Memorandum of Points and Authorities.

I.

FACTS

The Division anticipates calling Donna Milich as an investor witness in this matter. Donna Milich was an investor in the Williamsburg Apartments L.L.C. through HCH Enterprises L.L.C. and will provide direct testimony as to several of the Division's allegations in this case. Specifically, Donna Milich will testify as to the circumstances surrounding her purchase of the Williamsburg Apartments L.L.C. investment offered and sold by HCH Enterprises L.L.C. Ms.

1 Milich will testify as to the representations made to her by HCH Enterprises L.L.C. salesperson
2 regarding the investment and use of the funds. Although Donna Milich resides in the Phoenix area,
3 Ms. Milich is in the mid-west caring for her daughter who is in the last stages of a problem
4 pregnancy. In addition, while in the mid-west, Ms. Milich discovered a life threatening medical
5 condition and is under going treatments five days a week for the foreseeable future and is unable
6 to travel for the hearing.

7 II.

8 ARGUMENT

9 The purpose of administrative proceedings is to provide for the fair, speedy and cost
10 effective resolution of administratively justiciable matters. To effectuate that purpose, the
11 legislature provided for streamlined proceedings and relaxed application of the formal rules of
12 evidence. Specifically, A.R.S. § 41-1062(A)(1) provides for informality in the conduct of
13 contested administrative cases. The evidence submitted in an administrative hearing need not
14 rise to the level of formality required in a judicial proceeding, as long as it is "substantial, reliable
15 and probative." In addition, the Commission promulgated rules of practice and procedure to
16 ensure just and speedy determination of all matters presented to it for consideration. *See, e.g.,*
17 A.A.C. R14-3-101(B); R14-3-109(K). Allowing Ms. Milich to testify by telephone retains all
18 indicia of reliability and preserves Respondent's right to cross-examination.

19 Courts in other states have acknowledged that telephonic testimony in administrative and
20 civil proceedings is permissible and consistent with the requirements of procedural due process.
21 *See Babcock v. Employment Div.*, 696 P.2d 19 (Or. App. 1985) (court approved Oregon
22 Employment Division's procedure to conduct entire hearing telephonically); *W.J.C. v. County of*
23 *Vilas*, 369 N.W.2d 162 (Wis. 1985) (court permitted telephonic expert testimony in commitment
24 hearing). Both these courts concluded that fundamental fairness weighed in favor of permitting
25 telephonic testimony.

Public policy considerations also militate towards allowing Ms. Milich to testify telephonically. Through this form of testimony, the Division can better allocate its limited resources to better serve and protect the Arizona investing public.

III.

CONCLUSION

Permitting Ms. Milich to testify telephonically at the hearing allows the Division to present relevant witness evidence that is expected to be reliable and probative, is fundamentally fair, and does not compromise Respondents' due process rights. Therefore, the Division respectfully requests that its motion to permit witness (Donna Milich) to testify by telephone be granted.

ARIZONA CORPORATION COMMISSION
SECURITIES DIVISION

By Wendy Coy
Wendy Coy
Senior Counsel

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copies filed this 28th
day of September, 2004, with:

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Phoenix, Arizona 85007

AND

COPY of the foregoing
mailed/delivered this 28th
day of September, 2004, to:

Hon. Marc Stern, Administrative Law Judge
Hearing Division
Arizona Corporation Commission
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